

Justification Review Document

Description of Acquisition: Litigation Support Services. Expert Advisory Services in Support of Armed Services Board of Contract Appeal Case

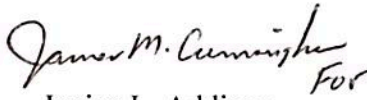
Statutory Authority: 10 U.S.C. 2304(c)(1), as prescribed in FAR 6.302-1, Only One Responsible Source and 10 U.S.C. 2304 (c)(3), Expert Services.

Estimated Contract Amount: \$114,000 Base. No option year is anticipated.

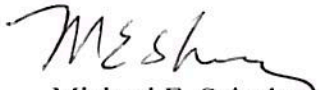
Period of Performance: One year from the date of modification until February 2018.

Required Review Signatures: The below have reviewed this J&A and find the justification adequate to support other than full and open competition.


1. Procurement Center
Director


For
Janice L. Addison

2. Legal Counsel
>SAT


Michael E. Sainsbury

3. Procurement Division
Director


Martin J. Jakim

4. Policy
Procurement Analyst

 28 Feb 17
Melissa A. Rios

5. Competition Advocate

 2/28/17
Wendy D. Laughlin

**Justification and Approval (J&A)
For Other Than Full and Open Competition**

1. **Contracting Office:** Defense Contract Management Agency (DCMA), Procurement Center, Fort Lee, Virginia.
2. **Type of Contract Action:** This is an in-scope modification to an existing litigation support services contract, S5121A-16-C-0016, awarded to Cotton & Company LLP by the DCMA Procurement Center. The DCMA Office of General Counsel and Contract Disputes Resolution Center seek to add an additional expert witness to the current litigation support services contract. FY17 O&M funds will be used for this effort.
3. **Description of Supplies/Services:** Services shall include providing litigation support services to the Government trial attorneys in the Appeal of Kellogg Brown & Root Services, Inc. ("KBR"), ASBCA No. 57530. These services include the review and evaluation of relevant documents and positions of the Government and KBR, meetings and conferences with CDRC trial counsel, review DCAA audit documentation and interview DCAA personnel regarding the audit and correspondence with KBR, evaluate KBR position and support, test assertions, perform quality control procedures, preparation of expert report, evaluate KBR's expert report, outline expert position. No. 57530, Appeal of Kellogg Brown & Root Services, Inc. (KBR), under Contract No. DAAA09-02-D-0007. The expert service acquired under this contract modification will assist the DCMA trial attorney in litigating the appeal of KBR. The DCMA Contract Disputes Resolution Center (CDRC) is seeking to modify an existing contract with Cotton & Company LLP to add an additional expert. The current contract with Cotton & Company is for litigation support and expert services in the ASBCA Case of Appeal of Pratt & Whitney pending before the Armed Services Board of Contract Appeals, ASBCA No. 59222. The modification to this contract will provide expert services to a separate case the CDRC is litigating against KBR. Trial phase: Deposition preparation and attendance, prepare and attend KBR depositions as requested, assist in hearing preparations, prepare, attend and testify at the hearing, assist in post hearing analysis and brief preparation, evaluate KBR's post trial briefs, review and comment on new filings, consult as requested.

Estimated value for this effort is \$114,000 for a one-year time period.

4. **Authority Cited:** 10 U.S.C. 2304(c)(1), as prescribed in FAR 6.302-1, Only One Responsible Source and 10 U.S.C. 2304 (c)(3), Expert Services authorize a non-competitive award to acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.
5. **Reason for Authority Cited:** The specific expert witness required to assist the DCMA trial attorney in this litigation is Ms. Sam Hadley, a principal at the firm of Cotton & Company LLP. Ms. Sam Hadley was previously under contract to DCMA to provide litigation support services to the CDRC in the same KBR litigation. That contract was S5105A-12-C-0008 and ran from August 8, 2012 to August 7, 2013. That contract expired while the appeals were

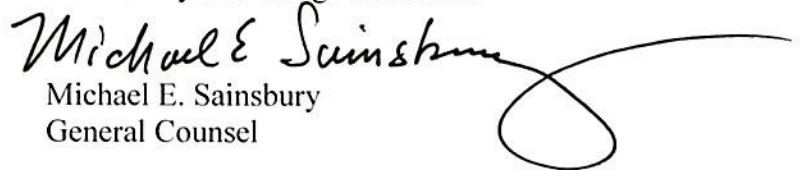
suspended and before the expert services were completed. The KBR litigation is now active and Ms. Hadley's services are required to complete the effort begun in 2012 to support the DCMA attorneys in defending the government's position. Based on Ms. Hadley's unique skills, prior experience, and knowledge with the facts and legal issues in the KBR litigation, Ms. Hadley is the only expert witness who will satisfy the government's needs in this case. Ms. Hadley has previously worked with the trial attorney for a year in this case, researched volumes of contract related documents, and produced an expert report in support of the government's position in this litigation. Ms. Hadley's knowledge of the facts and opinions expressed in her report are critical to the government's success in this matter.

6. **Efforts to Obtain Competition:** Because of Ms. Hadley's one-of-a-kind knowledge and prior experience on this exact same case, there were no efforts to obtain competition for expert witness support for the KBR litigation. Ms. Hadley has conducted analyses in this case and has written a report in support of the government's position. The contract DCMA CDRC is seeking to modify, S5121A-16-C-0016, was competitively awarded to Cotton & Company LLP to provide expert witness support, document management support, and other litigation support to CDRC trial attorneys litigating the appeal of Pratt & Whitney pending before the Armed Services Board of Contract Appeals, ASBCA No. 59222. Since Ms. Hadley is an employee of Cotton & Company LLP, and is the only expert witness that has worked on the case previously, a determination was made to add her services to the existing Cotton & Company LLP contract. Modifying the existing contract to procure similar services in a separate case is more efficient than creating a separate contract.
7. **Fair and Reasonable Cost Determination:** Pricing will be determined fair and reasonable based on current contract pricing in accordance with FAR 13. The fair and reasonable determination will be documented in the official contract file.
8. **Market Research Conducted:** None. This request to modify contract S5121A-16-C-0016 by adding Ms. Hadley's services is based on her previous work with DCMA under Contract S5105A-12-C-0008 from August 2012 – to August 2013 on this specific litigation.
9. **Other Factors:** This modification to S5121A-16-C-0016 is being done in lieu of awarding a separate sole-source contract to Cotton and Company for litigation support services for the KBR litigation. In addition, address any previous procurement history to include:
 - a. Contract Number(s) and date(s) for last award: S5105A-12-C-0008, Awarded 8 August 2012 and ended 7 August 2013.
 - b. Competitive status of the actions in (a): Sole-source award
 - c. Authority for other than full and open competition previously used – attach a copy of the previous acquisition J&A:
 - d. If prior award was competitive, explain the changed circumstances that lead to this requirement becoming non-competitive: n/a
 - e. Explain any unusual patterns which are revealed by purchase history (e.g., several consecutive, urgent buys): None.
10. **Sources:** Cotton & Company LLP, Alexandria, VA

- 11. Actions Taken to Remove Barriers:** When litigation support services are required for future requirements, the Agency will perform sufficient market research to locate additional sources that are capable of providing the level and expertise required for Government litigation services.

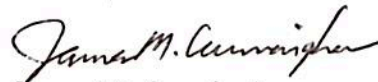
Technical/Requirements Certification

I certify that the supporting data under my cognizance, which are included within this justification, are accurate and complete to the best of my knowledge and belief.


Michael E. Sainsbury
General Counsel

Fair and Reasonable Price Determination/Contracting Officer Certification:

I hereby determine that the price for this action will be fair and reasonable and the memorandum detailing the Fair and Reasonable Price Determination will be included in the contract file documentation. I certify that this J&A is accurate and complete to the best of my knowledge and belief.


James M. Cunningham
Contracting Officer

Justification Approval

Based on the foregoing justification, I hereby approve the procurement of or modification to an existing contract for expert witness support in the Appeals of Kellogg Brown & Root pending before the Armed Services Board of Contract Appeals on an other than full and open competition basis, pursuant to the authority of 10 U.S.C. 2304 (c)(1), as prescribed in FAR 6.302-1, Only One Responsible Source and No Other Supplies or Services will Satisfy Agency Requirements, *and* 10 U.S.C. 2304 (c)(3), as prescribed in FAR 6.302-1, Industrial mobilization; engineering, developmental, or research capability; or expert services, provided that funds are available, or will be available, and that the services and products herein described have otherwise been authorized for acquisition.

APPROVED:



James M. Cunningham
Contracting Officer